

53. (Previously Presented) The article of claim 52, further comprising instructions for the preparation of said frozen beverage.

54. (Previously Presented) The article of claim 49 wherein said inulin in said frozen pellets is present at about 3.50 percent by weight of said frozen pellets.

55. (Currently Amended) The article of claim 50 wherein said inulin in said first frozen pellets is present at about 3.50 percent by weight of said first frozen pellets.

56. (Currently Amended) The article of claim 51 wherein said inulin in said first frozen pellets is present at about 3.50 percent by weight of said first frozen pellets.

57. (Previously Presented) The article of claim 55 further comprising:

- i. a container for mixing said frozen pellets; and
- ii. an insulated carrier for said container.

REMARKS

Claims 2-4, 6-14, 16-19, 21-30, 32-35, 37-43, and 49-57 are pending. Claims 23-30 and 39-43 have been withdrawn from consideration. Claims 2-4, 6-14, 16-19, 21, 22, 32-35, 37, 38 and 49-57 stand rejected under 35 U.S.C. 112. Claims 49-51, 55 and 56 are amended. In view of the amendments and the remarks herein, it is submitted that claims 2-4, 6-14, 16-19, 21, 22, 32-35, 37, 38 and 49-57 are patentable.

Reconsideration is accordingly respectfully requested.

Claims 2-4, 6-14, 16-19, 21, 22, 32-35, 37, 38 and 49-57 stand specifically rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement in that the claims contain subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The Examiner has specifically commented that Applicant does not teach "raising the melting point" with respect to the inulin, and points out that the inulin serves to "slow the melting rate" rather than change the melting point. The Examiner's comment is well taken and while there is impact on the melting onset temperature, there clearly is a slowing of the melting rate. This is supported, for example, at page 13, lines 12-14 ("slow melting"), page 35, lines 7-9 ("a slower melting rate"), and page 39, lines 3-11 ("pucks made with inulin had the slowest melting rate").

Accordingly, claims 49, 50 and 51, all of the independent claims in the case, have been amended to indicate the property of inulin "slowing the melting rate." It is respectfully submitted that the amendments overcome the rejection of all of the claims.

Claims 2-4, 6-14, 16-19, 21, 22, 32-35, 37, 38 and 49-57 further stand specifically rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement in that the claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention. The Examiner has specifically commented that Applicant does not teach the amount of inulin necessary to affect the melting rate when the inulin is used with both a sweetener and a stabilizer. Applicant teaches, at page 15, lines 14-24, that inulin can be used as a fiber source typically in the range from about 0.1% to about 10% by weight of the frozen pellet.

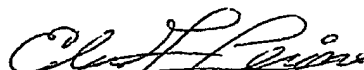
In view of the rejection, Applicant has accordingly amended the independent claims, 49, 50 and 51, to indicate the presence of inulin "being about 0.1% to about 10% by weight of said ...frozen pellets". It is respectfully submitted that the amendments overcome the rejection of all of the claims.

Accordingly, all of the claims in the case, 2-4, 6-14, 16-19, 21, 22, 32-35, 37, 38 and 49-57, are submitted as being patentable. Reconsideration, allowance and passage to issue of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if such would advance the prosecution of the application.

Respectfully submitted,

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